

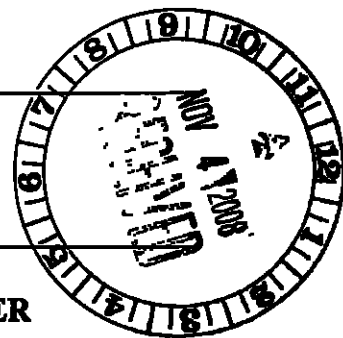
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35164

PETITION OF BNSF FOR DECLARATORY ORDER

**COMMENTS OF THE SHAWNEE ECONOMIC DEVELOPMENT FOUNDATION
OF SHAWNEE, OKLAHOMA**



**ENTERED
Office of Proceedings**

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Public Record**

**Shawnee Economic Development Foundation
133 Bell Street
Shawnee, OK 74801
(405) 273-7490**

Dated: November 3, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35164

PETITION OF BNSF FOR DECLARATORY ORDER

**COMMENTS OF THE SHAWNEE ECONOMIC DEVELOPMENT FOUNDATION
OF SHAWNEE, OKLAHOMA**

1. Notice is hereby given that the Shawnee Economic Development Foundation ("SEDF") intends to participate as a party of record in this proceeding. Please direct all matters pertaining to this proceeding to:

Michael D. Clover, Attorney
Shawnee Economic Development Foundation
128 N. Broadway
Shawnee, OK 74801
(405) 275-0700

2. On July 15, 2008, the BNSF Railway Company ("BNSF") filed a Petition for Declaratory Order ("Petition"), asking the Surface Transportation Board ("Board") to institute a declaratory order proceeding for the purpose of:

A. Declaring that BNSF's proposed abandonment and removal of that portion of its Chickasha Line that lies between MP 540.15 and MP 541.69 ("Middle Segment"), which is located Oklahoma County, OK, constitutes an unregulated 'relocation' of, rather than an abandonment of, a portion of its Chickasha line;

B. Declaring that BNSF's proposed abandonment and removal of that portion of its Chickasha Line that lies between MP 539.96 and MP 540.15 ("Eastern Segment"), which is located in Oklahoma County, OK, constitutes an unregulated 'relocation' of, rather than an abandonment of, a portion of its Chickasha line;

3. In its Petition, BNSF stated that it intends to institute an abandonment proceeding at some unspecified future date, to abandon that portion of its Chickasha Line that lies between MP 541.69 and 542.91, which is located in Oklahoma County, OK.

4. The subject of this proceeding, was the same subject of BNSF Railway Company - Abandonment Exemption - In Oklahoma County, OK, STB Docket No. AB-6 (Sub-No. 430X), that is, the portion of BNSF's Chickasha line that lies between MP 539.96 and 542.91 ("Abandonment Exemption").

5. In a Decision served on June 5, 2008, the Board found that BNSF had misused the Board's Notice of Exemption procedures, by knowingly including material false and misleading statements in its Abandonment Exemption, then held that BNSF's Abandonment Exemption was void *ab initio*. Since BNSF knowingly misled the Board in its Abandonment Exemption, any representations made by BNSF in this Declaratory Order proceeding should be closely scrutinized by the Board.

6. On October 2, 2008, the Board served a Decision instituting a declaratory proceeding. In this Decision, the Board stated interested parties may file comments, so long as they are filed by November 6, 2008.

Comments of The Shawnee Economic Development Foundation

7. On October 6, 2008, the City of Shawnee passed a resolution declaring the rail assets to/from/ at Union Station, located near MP 540.5 on the Chickasha Line, which line is the subject of this proceeding [in the "Middle Segment"], are needed for future rail service. A copy of this Resolution is appended hereto, and made a part hereof.

8. On October 8, 2008, SEDF approved a resolution in support of rail service in Oklahoma, including existing rail infrastructure for freight and passenger service in Shawnee and the Oklahoma City metroplex which resolution supported the City of Shawnee's Resolution referenced hereinabove.

9. SEDF represents the economic interests of private businesses in Shawnee, Oklahoma and the surrounding areas. For a number of those businesses, effective rail service is vitally important for their freight shipping needs. Those businesses include:

Shawnee Milling Company
Norwesco, Inc.
Ball Pipe & Supply
Exxon-Mobil Chemical
TDK Ferrites
Vanguard Stimulation

10. In *Missouri Pac. R. Co. Trustee Construction*, 282 I.C.C. 388 (1952), the Interstate Commerce Commission adopted a five part test in determining whether it had jurisdiction over a relocation project. One component of that 5-part test, was whether the proposed relocation would affect the rail carrier's ability to provide service to the public.

11. Prior to the Board ruling that BNSF does not need Board authority to implement its proposed relocation projects, the Board must find that the proposed relocation projects would involve **"no change in the service rendered by the applicant to the public."**

12. **The Middle Segment is needed for future rail service.** As stated in the Resolution:

A. "[T]he historic and strategically valuable Union Station rail yard in Oklahoma City lies at the center of the state's unique railway network linking the state's major towns."

B. "[T]he future of rail service in central Oklahoma depends upon having a hub that allows rapid and cost-effective development of a safe, convenient, fuel-efficient and environmentally friendly rail transit system for linking the economic engines of Oklahoma towns, cities and military bases;"

C. "[T]he City of Shawnee recognizes that in order for this area to have economic growth and to provide for the common good of our people, we must have access to this fast, fuel-efficient railroad as part of our transportation options in order to serve the industries and the citizens."

D. "[A]ccommodation of the need for an intermodal transportation hub for the Oklahoma City metropolitan area located in downtown Oklahoma City and the need for highway replacement through downtown Oklahoma City can be met if the proposed alignment of the Crosstown Expressway be moved 400 feet South of the present planned alignment through the Union Station rail yard."

13. **The Eastern Segment is needed for future rail service.** The Eastern Segment is needed for continual rail service, since the only way to route overhead traffic from East Oklahoma City to West Oklahoma City is via the Eastern Segment. Presently, the Eastern Segment is connected to the Middle Segment at MP 540.15. BNSF's proposes to realign the Eastern Segment about 300 feet South of its present alignment. BNSF does not propose to connect the realigned Eastern Segment to the unrealigned Middle Segment. If the realigned Eastern Segment is not connected to the Middle Segment, then the Middle Segment would be severed from the national Rail System. This would seriously adversely impact BNSF's ability to provide service on the Middle Segment from the East. In addition, this would foreclose using the Middle Segment as a "hub" that "lies at the center of the state's unique railway network linking the state's major towns."

CONCLUSION

14. The Middle Segment is needed for future rail service. BNSF's proposed realignment of the Middle Segment to the Packingtown Lead would result in the de facto abandonment of the Middle Segment. Abandonment of the Middle Segment would result in a "change in the service rendered by the applicant to the public."

15. To date, BNSF has not provided any evidence that its proposed relocation of the Eastern Segment (between MP 539.96 and 540.15) would not adversely affect BNSF's ability to provide service on the Middle Segment. Before the Board grants BNSF authority to realign the Eastern Segment, BNSF should be required to demonstrate to the Board how the realigned Eastern Segment would connect to the Middle Segment, since as proposed, the realigned Eastern Segment would no longer connect to the Middle Segment.

16. The SEDF would respectfully ask that the Board find that BNSF's proposed relocation/abandonment of the Eastern and Middle Segments **requires Board authority**.

Respectfully,



Michael D. Clover, Attorney for
Shawnee Economic Development Foundation

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of November, 2008, a copy of the foregoing Comments of the Shawnee Economic Development Foundation was mailed by first class mail, postage prepaid, to Kristy Clark, BNSF Railway Company, 2500 Lou Menk Drive, Fort Worth, TX 76131-2828, and to Edward Kessler, 1510 Rosemont Drive, Norman, OK 73072.



Michael D. Clover

RESOLUTION NO. 6334

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE CITY OF SHAWNEE, OKLAHOMA, REQUESTING THE GOVERNOR OF THE STATE OF OKLAHOMA TO APPOINT A SPECIAL COMMISSION TO CONSIDER FUTURE RAIL TRANSIT OPTIONS IN THE OKLAHOMA CITY METROPOLITAN AREA; FUTURE USE OF UNION STATION AND ITS ASSOCIATED RAIL LINES TO ENHANCE FUTURE RAIL TRANSIT FOR THE STATE OF OKLAHOMA; AND ALTERNATE ROUTES FOR THE INTERSTATE 40 CROSSTOWN EXPRESSWAY.

WHEREAS, the replacement of the I-40 Crosstown Expressway through downtown Oklahoma City is critically necessary due to its deteriorated condition; and

WHEREAS, rail transit can stimulate economic development; provide dependable, safe and inexpensive transportation for all; reduce vehicular traffic and congestion; lower carbon dioxide emissions that contribute to global warming, provide an important means of transportation for military facilities; and greatly improve air quality in metropolitan areas; and

WHEREAS, the Oklahoma City metropolitan area ranks high nationally among other large cities in terms of its widespread geographic area and cumulating population, ranks 40th out of 100 as most traffic congested, and ranks last out of 50 as best prepared for \$4 per gallon gasoline, according to "Major US Cities Preparedness for an Oil Crisis, a study by Warren Kienitzig, common Current, March 2008; and

WHEREAS, citizens of the central Oklahoma metropolitan area are in need of safe, efficient, and affordable transportation alternatives as opposed to reliance upon personal automobiles in face of rising gasoline prices; and

WHEREAS, the Environmental Protection Agency has recently established stricter standards for ozone concentrations which are directly related to automobile usage and in 2006, Central Oklahoma exceeded the maximum allowed ozone level 11 times, almost twice as many times as the previous four years combined and before the new federal standards of the Clean Air Act became law; and

WHEREAS, the Oklahoma City metropolitan area is behind many other large cities in transportation efficiencies, including Denver, Salt Lake City and Dallas, whose Union Stations are the foundation for their vibrant rail and bus systems and have been successful beyond expectations and have received enthusiastic public support and demand for wider availability; and

WHEREAS, the historic and strategically valuable Union Station rail yard in Oklahoma City lies at the center of the state's unique railway network linking the state's major towns, Tinker Air Force Base, and Will Rogers World Airport and is the last grand urban passenger rail yard in the west that remains virtually unused today, with all of its original space and much of its essential infrastructure intact, including numerous tracks connecting every corner of the state; and

WHEREAS, the future of rail service in central Oklahoma depends upon having a hub that allows rapid and cost-effective development of a safe, convenient, fuel-efficient and environmentally friendly rail transit system for linking the economic engines of Oklahoma towns, cities and military bases; and

WHEREAS, recent rulings by the Federal Surface Transportation Board provide an important opportunity to expeditiously reconsider viable route alternatives for the new Crosstown Expressway that do not require the destruction of Union Station's invaluable rail yard; and

WHEREAS, experience shows that any major public infrastructure project requires years, sometimes decades, of planning and foresight, which translates into millions of dollars in additional costs to taxpayers, before opening for service, as well as millions of dollars of additional costs to taxpayers while citizens now urgently seek alternatives to traditional highway travel; and

WHEREAS, government at all levels cannot procure adequate funding for new roads and bridges and are years behind on maintenance in many cases; and

WHEREAS, pending petroleum shortfalls coupled with the rising cost of auto fuels threaten the economy and security of the state and the nation, change the assumptions made previously concerning the value of rail travel in the state and the country; and

WHEREAS, accommodation of the need for an intermodal transportation hub for the Oklahoma City metropolitan area located in downtown Oklahoma City and the need for Highway replacement through downtown Oklahoma City can be met if the proposed alignment of the Crosstown Expressway be moved 400 feet south of the present planned alignment through the Union Station rail yard.

WHEREAS, the City of Shawnee recognizes that in order for this area to have economic growth and to provide for the common good of our people, we must have access to this fast, fuel efficient railroad as part of our transportation options in order to serve the industries and the citizens.

NOW, THEREFORE, BE IT RESOLVED:

WHEREAS, the City of Shawnee, Oklahoma, supports the efforts of ONTRAC to further investigate cost effective rail options for the State of Oklahoma and encourages the Association of Central Oklahoma Governments and its member cities to give due consideration to joining in the adoption of this resolution.

BE IT FURTHER RESOLVED THAT, the City of Shawnee, Oklahoma respectfully requests that The Honorable Brad Henry, Governor of Oklahoma, convene a Special Commission of citizens, public officials, and transportation experts to consider immediately and expeditiously the future of rail transit options in the Oklahoma City metropolitan area, to study future use of Union Station and its associated rail lines to enhance future rail transit for the state, to weigh the short and long term benefits of alternative routings of the Crosstown Expressway that would not jeopardize any future use of the Union Station rail yard, and that the commission report to the Governor and to the public its finding and recommendation in an expeditious manner; and that until such time, the Governor direct the Oklahoma Department of Transportation to proceed with only those aspects of the Crosstown Expressway that do not affect Union Station's rail yard or connecting rail lines or that limit the State's ability, either materially or financially, to implement any alternative routings recommended by the Special Commission.

PASSED AND ADOPTED this 6th day of October, 2008.


CHUCK MILLS, MAYOR

SEAL

ATTEST:


DONNA MAYO, ACTING CITY CLERK